



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel
Acting Director

**SUBJECT: PROTEST OF A MITIGATED
NEGATIVE DECLARATION FOR
A PUBLIC PROJECT
FILE NO. PP01-04-071**

DATE: December 5, 2001

Council District: 6

SUPPLEMENTAL

BACKGROUND

This is a protest of a Mitigated Negative Declaration (MND) prepared for a Public Project to allow storm drain improvements, which include the installation of 1,700 linear feet of storm sewer pipeline and replacement of an existing 12-inch outfall with a new 54-inch outfall into the Guadalupe River. The new 54-inch outfall will be realigned to be located approximately 60 feet downstream from the existing 12-inch outfall, which will be plugged and discontinued. The project site is located along Redbird and Nightingale Drives, between the Guadalupe River and Canoas Creek (see attached map).

On November 28th, Ms. Nina Koepcke submitted a letter to the Planning Commission. In this letter, Ms. Koepcke claims that due to the presence of concrete chunks forming a peninsula on the bank of the riverbed opposite her property, the increased volume of water from the proposed project will be redirected onto her property. Ms. Koepcke is concerned that redirection of any additional water into her property will expedite erosion to the soil at the edge of the bank that currently supports two large walnut trees. At the public hearing on November 28th, the Planning Commission heard testimony from Ms. Koepcke regarding potential erosion impacts to her property, and testimony from Mr. Dentino regarding the need to implement the project to help alleviate flooding in the Canoas Garden neighborhood. The Commission continued the item and requested additional analysis on the impacts of the proposed project in light of this new information.

The supplemental information is attached in the memorandum from Taher Basma from the Department of Public Works, as well as photographs of the site.

ANALYSIS

On November 30th, 2001, staff visited the river bank behind Ms. Koepcke's property, and noted evidence of severe erosion that has occurred on her property, particularly towards the higher elevations of the bank where two large walnut trees stand. Staff also noted the broken concrete chunks as referenced in Ms. Koepcke's letter. Ms. Koepcke admitted she had no proof the City of San Jose deposited the concrete in the river as she alleged at the Planning Commission hearing on November 28th. On the walls of the river channel opposite Ms. Koepcke's property lay several blocks of broken concrete, each is approximately one and one-half feet in length, one foot wide and six inches thick. Approximately twenty-five 25 feet below the top of the bank lies a concrete mound at the floor of the riverbed measuring approximately four feet high, four feet wide and ten feet long.

Erosion Analysis at Ms. Koepcke's Property. The erosion near the top of the bank on Ms. Koepcke's property is caused by high flows in the Guadalupe River and debris not cleaned from the river channel. The proposed 54-inch outfall would only operate during low and medium flows, because high flows in the river would cause the flapgate on the outfall to automatically shut. The closed flapgate would store any additional run-off in the 1,700 foot-long storm sewer line and prevent any additional discharge into the river. An increase in the amount of discharge from the 54-inch outfall will only occur during moderate flow. Moderate flow in the Guadalupe River would result a water level measuring approximately ten feet in height from the floor of the river channel, which is well below the level at which the problematic erosion is occurring on Ms. Koepcke's property. Moreover, the peninsula formed by the concrete debris would be completely submerged during moderate flow, and would not be capable of redirecting the flow towards Ms. Koepcke's property.

Based upon information from staff's visits to the site and the analysis provided by the Department of Public Works, staff concludes that the increased water flow from the proposed 54-inch outfall will not result in a significant impact to erosion on Ms. Koepcke's property. Therefore, no additional mitigation is required. This information further clarifies, and is consistent with the analysis provided in the Mitigated Negative Declaration and the Initial Study.

Removal of Concrete Debris. Staff recognizes that the concrete debris in the riverbed constitutes a potential safety hazard, even though it bears no significant relationship to the proposed project. Staff has consulted with the Santa Clara Valley Water District in pursuing avenues to remove the debris.

In a non-emergency situation, activity within a natural channel typically requires permits from the State Department of Fish and Game, and would be required to undergo environmental review. Furthermore, the Water District is allowed to perform work only on District-owned properties, and not on private property. It may take approximately one year to obtain Department of Fish and Game permits and environmental clearance, before any action can be taken to remove the debris in the riverbed. During an emergency situation, streambed activity by the Water District can proceed without permits, and is exempt from environmental review. In addition, the Water District would be able to perform work on private property in the event of an emergency.

On December 4th, 2001, Mr. Gene Balzer from the Santa Clara Valley Water District performed a preliminary survey of the property lines, and determined that the concrete debris occurs on private property (Assessor's Parcel Number 455-27-009) that is not owned by the Santa Clara Valley Water District or Ms. Nina Koepcke. It is technically the responsibility of the private property owner to maintain their property, including the removal of debris, even where the property includes a portion of a river channel. The Santa Clara Valley Water District plans to send a letter to the private property owner to inform him of his responsibility.

To provide additional assistance in resolving this matter, City Public Works staff is proposing to broach this issue with the Water District Flood Advisory Committee to request assistance with the removal of the concrete debris.

Conclusion. The California Environmental Quality Act (CEQA) specifies that the lead agency shall adopt a Negative Declaration if it determines, based upon substantial evidence, that a proposed project would not have a significant effect on the environment. Substantial evidence includes (1) fact, (2) a reasonable assumption predicated upon fact, or (3) expert opinion supported by fact. Substantial evidence is not an argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

The Director of Planning, Building and Code Enforcement issued and adopted a Mitigated Negative Declaration based upon the Initial Study and other evidence in the record. The City is required to respond to written comments filed with the Director of Planning, Building and Code Enforcement. Preparation of an EIR for this project would not disclose any more substantial information regarding the environmental impacts of the project than is currently known. Consequently, the preparation of an EIR is unnecessary.

Alternative Action. The alternatives available to the Planning Commission at this time are to uphold the Mitigated Negative Declaration for the Public Project proposal or to require the preparation of an EIR.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends that the Planning Commission uphold the Mitigated Negative Declaration prepared for the Public Project.

Joseph Horwedel, Acting Director
Planning, Building and Code Enforcement

JH:jl

Attachments

c: Nina G. Koepcke
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